

*Kustura (Hajrudin) v. Department of Labor & Industries*

No. 81478-3

Chambers, J. (dissenting) —The court’s opinion today misreads carefully crafted statutes so as to deny non-English speaking workers in our state a significant benefit the legislature intended to provide: the ability to meaningfully participate in the workers’ compensation process with the assistance of translators. I respectfully dissent.

I would start our analysis with the legislature’s own statement of purpose:

It is hereby declared to be the policy of this state to secure the rights, constitutional or otherwise, of persons who, because of a non-English-speaking cultural background, are unable to readily understand or communicate in the English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

RCW 2.43.010. This is expansive language and should guide our reading of related statutes. Similarly, it has long been the law of the State that the workers’ compensation statute is to be interpreted liberally in favor of the injured worker:

This court is committed to the doctrine that our workmen's compensation act [(laws of 1927, ch. 310)] should be liberally construed in favor of its beneficiaries. It is a humane law and founded on sound public policy, and is the result of thoughtful, painstaking, and humane considerations, and its beneficent

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provisions should not be limited or curtailed by a narrow construction.

*Hilding v. Dep't of Labor & Indus.*, 162 Wash. 168, 175, 298 P. 321 (1931); accord *Lightle v. Dep't of Labor & Indus.*, 68 Wn.2d 507, 510, 413 P.2d 814 (1966) (“We are committed to the rule that the Industrial Insurance Act [(Title 51 RCW)] is remedial in nature and its beneficial purposes should be liberally construed in favor of beneficiaries.”) (citing *Wilber v. Dep't of Labor & Indus.*, 61 Wn.2d 439, 446, 378 P.2d 684 (1963)). In my view, the same principle should apply to statutes that are necessary for the implementation of the act, such as chapter 2.43 RCW.

Turning to that chapter, “Except as otherwise provided in this section, when a non-English-speaking person is involved in a legal proceeding, the appointing authority shall appoint a qualified interpreter.” RCW 2.43.030(1)(c). “‘Legal proceeding’ means a proceeding in any court in this state, grand jury hearing, or hearing before an inquiry judge, or before an administrative board, commission, agency, or licensing body of the state or any political subdivision thereof.” RCW 2.43.020(3). Finally, relevantly, “In all legal proceedings in which the non-English-speaking person is a party . . . the cost of providing the interpreter shall be borne by the governmental body initiating the legal proceeding.” RCW 2.43.040(2). Thus, if workers’ compensation proceedings are proceedings initiated by the State or any political subdivision thereof, non-English-speaking claimants are entitled to interpreters.

Read liberally, as we must, the department initiates the proceedings. RCW 51.28.010(1) obligates employers, not employees, to notify the department if an employee has been injured and has received medical treatment. At that point, the department initiates proceedings. RCW 51.28.010(2) (“Upon receipt of such notice of accident, the department shall immediately forward to the worker . . . notification, in nontechnical language, of their rights under this title.”). RCW 2.43.040(2)’s requirement that a government agency initiate proceedings is satisfied.

Next, a workers’ compensation action is a legal proceeding. The statute defines “[l]egal proceeding” liberally to include “a proceeding . . . before an administrative board . . . [or] agency.” RCW 2.43.020(3). These claimants appeared before an administrative board in a proceeding initiated by the State. They appeared in a legal proceeding.

The claimants were entitled to workers’ compensation. Their English was limited. They should have been provided interpreters to secure their rights.

I respectfully dissent.

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AUTHOR:

Justice Tom Chambers

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WE CONCUR:

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Justice Richard B. Sanders

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